

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE LUTHER ROOKS,

Defendant-Appellant.

UNPUBLISHED

April 15, 2014

No. 313934

Wayne Circuit Court

LC No. 11-011327-FH

Before: HOEKSTRA, P.J., and SAWYER and GLEICHER, JJ.

PER CURIAM.

At issue in this case is whether a person entitled to possess a gun at work for security purposes, is also permitted to transport the gun to and from work in his or her vehicle absent a license to do so. Following a bench trial, the circuit court determined that defendant was not so permitted and convicted him of carrying a concealed weapon (CCW) in violation of MCL 750.227. The court thereafter sentenced defendant to nine months' probation. Because this conviction comports with the plain language of the relevant statutes, we affirm.

I. BACKGROUND

Defendant worked as a security guard at an adult entertainment club where he carried a handgun for protection purposes. His habit was to transport his gun to and from work in his glove compartment. He separated the magazine from the gun and placed it in his enclosed center console. Defendant testified that he usually locked those compartments.

On October 30, 2011, Detroit police officers approached defendant's vehicle while he was parked in front of his girlfriend's home. The vehicle was parked too far from the curb and the officers intended to issue a citation for a civil infraction. Defendant immediately volunteered that he was "open carrying" a firearm in his glove compartment. The officers investigated and found the compartment unlocked. Defendant's permit to carry a concealed weapon had been suspended at an earlier date. Given defendant's lack of a CCW permit, he was charged with violating MCL 750.227.

The theory of the defense was that defendant had a good-faith belief that he was complying with the law because he had been told by a police officer that he could "transport" the gun. He also asserted that he had discussed the legal requirements with his probation officer, a bounty hunter or sheriff, and an attorney. The advice defendant received was that he could

transport the weapon to and from work as long as it was unloaded and locked away. The statute upon which defendant relied in this regard, MCL 324.43513, is a natural resources management statute governing hunting and fishing.

II. SUFFICIENCY OF THE EVIDENCE

Defendant challenges the sufficiency of the evidence to support his conviction.

When reviewing a defendant's challenge to the sufficiency of the evidence, we review "the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). We review de novo underlying issues of statutory interpretation. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010). We must apply the plain, unambiguous language of a statute as written and may only engage interpretative tools when the statutory language is equally susceptible to more than one meaning. *People v Valentin*, 457 Mich 1, 5-6; 577 NW2d 73 (1998). [*People v Smith-Anthony*, 296 Mich App 413, 416; 821 NW2d 172 (2012).]

MCL 750.227 prohibits the carrying of a handgun in a vehicle, in relevant part, as follows:

(1) A person shall not carry . . . any other dangerous weapon . . . whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person.

(2) A person shall not carry a pistol . . . whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

It was undisputed that defendant was the sole occupant of his vehicle and that he had a handgun in his unlocked glove compartment. Defendant also testified that his permit to carry a concealed weapon had been suspended. Taking those facts in the light most favorable to the prosecution, there was sufficient evidence to support that defendant violated MCL 750.227.

Moreover, there is no exception in MCL 750.234d that would allow an unlicensed person to transport a weapon in a vehicle. That statute provides that a person shall not carry a firearm at an establishment with a liquor license unless the person owns or is employed by that establishment and possesses the firearm "to provide security services for that entity." MCL 750.234d(1)(h), (2)(a). Under this statute, defendant might be permitted to store his handgun at his place of employment and possess it while providing security services at the club as long as the club had a liquor license. Nothing in this statute allowed defendant to transport the weapon or to keep it at his home.

Defendant argues that he had a good-faith defense because he investigated his right to transport his handgun with an attorney, a police officer, a probation officer, and either a sheriff or bounty hunter. Defendant contends that he therefore had no intent to break the law. However, carrying a concealed weapon without a license is a general intent crime. See *People v Sturgis*, 427 Mich 392, 408; 397 NW2d 783 (1986) (“The thrust of the concealed weapon statute is the prevention of ‘carrying’ a weapon which is ‘concealed’ regardless of the intent with which the weapon is carried.”). “[T]he intent required to make one punishable under the enactments against carrying concealed weapons, is an intent to do the act prohibited by the statute, viz.: to carry weapons concealed upon the person, and that the ultimate purpose is immaterial.” *People v Williamson*, 200 Mich 342, 346; 166 NW 917 (1918). The prosecutor did not need to prove that defendant intended to violate the law, only that he intended his actions and that those acts were prohibited by law. The prosecutor met that burden.

Defendant also argues that he has or should have a Second Amendment right to carry an unloaded firearm in his vehicle. We review such constitutional challenges de novo. *People v Deroche*, 299 Mich App 301, 305; 829 NW2d 891 (2013). In *People v Yanna*, 297 Mich App 137, 142; 824 NW2d 241 (2012), this Court held that US Const, Am II and Const 1963, art 1, § 6 “grant individuals a right to keep and bear arms for self-defense.” In *Yanna*, this Court found unconstitutional a complete ban on the possession of stun guns by private citizens because those weapons could be used for self-defense. *Id.* at 143-144. That statute, MCL 750.224a, was held unconstitutional because it effectuated a complete ban on possession both in public and in the home with no exceptions. *Yanna*, 297 Mich App at 146. The statute at issue in this case, MCL 750.227, is not similarly unconstitutional. The statute does contain exceptions, allowing possession of a weapon under certain circumstances, including in a person’s home.

Defendant also argues, without citation to legal authority, that it is illogical that a person can carry a rifle down the street, but cannot carry the same unloaded weapon in a vehicle. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority.” *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Accordingly, this Court need not address this further. In any event, the logic behind a statute is a matter of public policy and the Legislature alone is empowered to make such decisions and distinctions. See *Devillers v Auto Club Ins Ass’n*, 473 Mich 562, 589; 702 NW2d 539 (2005) (“[P]olicy decisions are properly left for the people’s elected representatives in the Legislature, not the judiciary.”).

III. PROSECUTORIAL MISCONDUCT

Defendant also argues that the prosecutor committed misconduct in closing arguments by raising a statute that was not relied upon during the evidentiary portion of the trial.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). Prosecutorial misconduct issues are decided case by case, and the reviewing court must examine the pertinent portion of the record and evaluate a prosecutor’s remarks in context to determine whether the defendant was denied a fair and impartial trial. *People v Legrone*, 205 Mich App 77, 82-83; 517 NW2d

270 (1994). [*People v Rice (On Remand)*, 235 Mich App 429, 434-435; 597 NW2d 843 (1999).]

In closing argument, the prosecutor acknowledged defendant's testimony that he had spoken to law enforcement officers who told him that he could transport his handgun if he kept the bullets separate and kept the gun in a locked container. The prosecutor noted that defendant did not follow that advice (which he argued was inaccurate) because the handgun was in the vehicle's unlocked glove compartment and was completely accessible to defendant. Defense counsel objected that the prosecutor's arguments were limited to "the four corners of the evidence" and as he had not requested the court to take judicial notice of any additional laws as required by MRE 202, this line of argument was improper. The court overruled the objection, ruling that as the defense had raised the issue that defendant "transport[ed]" his weapon with a good-faith belief his actions were legal, the prosecutor could argue that no statutory exception allowing the legal transportation of a weapon had "been made out." The prosecutor then continued by stating that there are statutory exceptions in MCL 750.231a, permitting the transportation of guns in certain circumstances. The prosecutor argued that defendant had not raised a qualifying exception.

Defendant's brief is poorly written. However, defendant appears to assert that the prosecutor had a duty to disclose the statute during trial or to amend the information to include allegations that defendant did not follow MCL 750.231a. The prosecutor's argument did not add elements or charge defendant with a different crime. Rather, the prosecutor was simply positing that none of the statutory exemptions to MCL 750.227 applied. This argument directly responded to defendant's theory that he either was permitted to transport his weapon in his vehicle or had a good-faith belief he was acting legally. This responsive argument did not amount to prosecutorial misconduct. See *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

Defendant further suggests that MRE 202 applies under the circumstances and that the prosecutor violated it. MRE 202 addresses judicial notice of law. It provides:

(a) A court may take judicial notice without request by a party of (1) the common law, constitutions, and public statutes in force in every state, territory, and jurisdiction of the United States; (2) private acts and resolutions of the Congress of the United States and of the Legislature of Michigan, and ordinances and regulations of governmental subdivisions or agencies of Michigan; and (3) the laws of foreign countries.

(b) A court shall take judicial notice of each matter specified in paragraph (a) of this rule if a party requests it and (1) furnishes the court sufficient information to enable it properly to comply with the request and (2) has given each adverse party such notice as the court may require to enable the adverse party to prepare to meet the request.

Under subsection (a), a court can take judicial notice of statutes sua sponte, and under subsection (b) upon request if the party furnishes sufficient information for the court's consideration and gives the adverse party sufficient notice.

Because the prosecutor never asked the court to take judicial notice, subsection (b) does not apply. Under subsection (a), the trial court had discretion to sua sponte take judicial notice of the statutory exceptions to MCL 750.227 that were contained in MCL 750.231a. Before rendering its decision, the trial court allowed defendant approximately two weeks to research the law to determine if he had a viable defense. Defendant provided no supplemental argument regarding MCL 750.231a despite this opportunity. Accordingly, we discern no violation MRE 202.

We affirm.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Elizabeth L. Gleicher